



not entitled to succeed on their damage model as submitted to this Court for the reason that State Auto was prejudiced by Defendants' failure to abide by the prompt notice and sworn proof of loss provisions of the insurance policy. The summary judgment evidence establishes that the damages sought were incurred outside the policy period and/or were excluded under the policy. To the extent the property damage may have been covered under the policy, Defendants have failed to segregate the covered and excluded damages as required by the concurrent causation doctrine.

The summary judgment evidence adduced and attached hereto affirmatively shows that there is no genuine issue of material fact as to any essential element of Defendants' counterclaims and damages sought. Therefore, summary judgment should be granted in favor of State Auto in its suit as a matter of law, and for any and all additional relief that State Auto may show itself justly entitled at law or in equity.

Respectfully submitted, this 30<sup>th</sup> day of August, 2018.

/s/Charles B. Mitchell Jr.

**CHARLES B. MITCHELL, JR.**

State Bar No. 14207000

Federal ID No. 16627

**MICHAEL SHANE O'DELL**

State Bar No. 24065835

NAMAN, HOWELL, SMITH & LEE, PLLC

306 West 7th Street, Suite 405

Fort Worth, Texas 76102-4911

Telephone: 817.509-2040

Facsimile: 817.509-2060

Email: [charles.mitchell@namanhowell.com](mailto:charles.mitchell@namanhowell.com)

Email: [sodell@namanhowell.com](mailto:sodell@namanhowell.com)

**ATTORNEYS FOR PLAINTIFF,  
STATE AUTOMOBILE  
MUTUAL INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing has been served on the 30<sup>th</sup> day of August, 2018, as follows via E-mail and via the Court's ECF system, which sent notification to the following:

***Via E-mail and Via E-Service***

Robert W. Loree  
Todd Lipscomb  
Cassandra Pruski  
Law Offices of Loree & Lipscomb  
The Terrace at Concord Park  
777 E. Sonterra Blvd., Suite 320  
San Antonio, Texas 78258

***Via E-mail and E-Service***

Christopher D. Kratovil  
Alison R. Ashmore  
DYKEMA COX SMITH  
1717 Main Street, Suite 4200  
Dallas, Texas 75201

/s/Charles B. Mitchell, Jr.  
Charles B. Mitchell, Jr.